

1 Michael H. Meyer, Esq. #82336  
2 Chapter 13 Trustee  
3 PO BOX 28950  
4 Fresno, CA 93729-8950  
5 Telephone (559) 275-9512  
6 Fax (559) 275-9518

5 UNITED STATES BANKRUPTCY COURT  
6 EASTERN DISTRICT OF CALIFORNIA

7 In re:

8 Victor Cruz

9 Debtor

} Case No.: 10-11769-A-13K  
} DC NO. MHM-1  
} CHAPTER 13  
} CHAPTER 13 TRUSTEE'S OBJECTION TO  
} CONFIRMATION OF DEBTORS CHAPTER 13  
} PLAN  
} DATE: April 29, 2010  
} TIME: 09:00 AM  
} PLACE: U.S. Courthouse  
} 1300 18th Street  
} Suite A  
} Bakersfield, Ca 93301-  
} JUDGE: HON. Whitney Rimel

17  
18 MICHAEL H. MEYER, Chapter 13 Trustee in the above referenced matter, objects to  
19 confirmation of Debtor's Chapter 13 Plan on the following grounds:

20  
21 **I.**  
**BASIS OF OBJECTION**

22 The Trustee's objection to confirmation is made on the following grounds:

- 23 1. The Debtor's plan impermissibly modifies the claim of the creditor secured only by a  
24 security interest in real property that is the Debtor's principal residence. [11 U.S.C. §1322(b)(2)]
- 25 2. The Debtor's plan has not been proposed in good faith. [11 U.S.C. §1325(a)(3)]
- 26 3. The Debtor's plan fails to provide for the value, as the effective date of the plan, of property  
27 to be distributed under the plan on account of each allowed unsecured claim is at least the amount that  
28 would be paid on such claim if the estate of the Debtor was liquidated under a Chapter 7 of this title on  
such date. [11 U.S.C. §1325(a)(4)]

1           4. The Debtor will not be able to make all payments under the plan and comply with the plan.

2 [11 U.S.C. §1325(a)(6)]

3           5. The action of the debtor in filing the petition was in bad faith. [11 U.S.C. §1325(a)(7)]

4           6. Failure to commence making timely payments pursuant to 11 U.S.C. §1326.

5 [11 U.S.C. §1307(c)(4)]

6           7. There has been an unreasonable delay by Debtor that is prejudicial to creditors.

7 [11 U.S.C. §1307(c)(1)]

8

9

10           **FACTS**

11

12           (1) The debtor has a 1<sup>st</sup> deed of trust to BSI financing. The mortgage is in arrears based on the

13 schedules \$20,649.00. The debtor has placed the creditor in class one but wants to pay the on-going

14 mortgage direct. The debtor testified that he does not live in the house but his brother in law lives there

15 and makes the payments. This is not the debtor's residence and is not necessary for reorganization. The

16 debtor is self employed and does not make sufficient monies to fund a plan. The debtors plan is not

17 feasible and the debtor will be unable to make the payments direct.

18

19           (2) The debtor's exemptions are incorrect.

20           (3) The debtor has made no payments to the trustee.

21

22           **III.**

23           **POINTS AND AUTHORITIES**

24

25           11 U.S.C. §1322(a) provides that a plan shall provide for certain payments to creditors and for

26 payment of claims within specified classes. Pursuant to 11 U.S.C. §1325(a)(1) the Court shall confirm

27 a plan if the plan complies with the provisions of Chapter 13 and with other applicable provisions of

this title.

28           The debtor carries the burden of proving, by a preponderance of the evidence that the plan

complies with the statutory requirements of confirmation. In re Arnold and Baker Farms, 177 B.R.

1 648, 654 (9<sup>TH</sup> Cir. BAP 1994), In re Warren, 89 B.R. 87, 93 (9<sup>th</sup> Cir. B.A.P 1988); In re Wolff, 22 B.R.  
2 510, 512 (9<sup>th</sup> Cir. 1982)

3 11 U.S.C. §1325(a) provides that the Court shall confirm a plan if certain criteria set forth in  
4 §1325(a) is met.

5  
6 **WHEREFORE**, the Trustee requests that the Trustee's objection to confirmation of the plan  
7 be sustained.

8  
9  
10 Dated: 4/7/10

Respectfully submitted,

11 /S/ MICHAEL H. MEYER  
MICHAEL H. MEYER  
12 Chapter 13 Trustee

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28